

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

REBECCA TERRY,

Plaintiff,

v.

COUNTY OF MILWAUKEE,  
RICHARD R. SCHMIDT, OFFICER  
BRIAN WENZEL, UNKNOWN  
EMPLOYEES OF MILWAUKEE  
COUNTY JAIL, UNKNOWN JAIL  
SUPERVISORS, ARMOR  
CORRECTIONAL HEALTH  
SERVICES, CAROLYN EXUM,  
MORGAN BEVENUE, MARGARET  
HOOVER, UNKNOWN EMPLOYEES  
OF ARMOR CORRECTIONAL  
HEALTH SERVICES, and  
UNKNOWN ARMOR  
HEALTHCARE SUPERVISORS,

Defendants.

Case No. 17-CV-1112-JPS

**ORDER**

In her amended complaint, Plaintiff asserts constitutional claims against Jane and John Doe employees of Armor Correctional Health Services ("Armor"). (Docket #129 at 5). Armor filed a motion to dismiss these Doe defendants on July 9, 2018 pursuant to Federal Rule of Civil Procedure 12(b)(5), arguing that Plaintiff has had sufficient opportunity to learn their identities during discovery and has not timely identified or effected service upon them. (Docket #149). The deadline for responding to Armor's motion was July 30, 2018, *see* Civ. L. R. 7(b), but Plaintiff has filed no response to date. Consequently, the Court treats the motion as

unopposed and will grant it on that basis. *Id.* 7(d) (“Failure to file a memorandum in opposition to a motion is sufficient cause for the Court to grant the motion.”). However, contrary to Armor’s request for a dismissal with prejudice, the Court will dismiss these defendants without prejudice, as the text of Federal Rule of Civil Procedure 4(m) requires it. *See* Fed. R. Civ. P. 4(m) (“If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.”); *Cardena v. City of Chi.*, 646 F.3d 1001, 1007 (7th Cir. 2011).

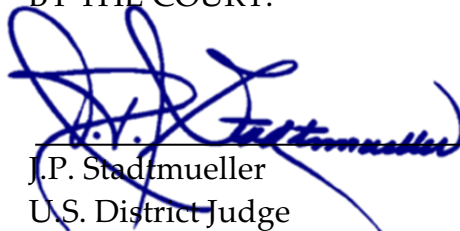
Accordingly,

**IT IS ORDERED** that Armor Correctional Health Services’ motion to dismiss the Armor Doe defendants (Docket #149) be and the same is hereby **GRANTED in part**; and

**IT IS FURTHER ORDERED** that Defendants Jane and John Doe, Unknown Employees of Armor Correctional Health Services, and Jane and John Doe, Unknown Armor Healthcare Supervisors (Docket #129 at 1, 5) be and the same are hereby **DISMISSED** from this action without prejudice.

Dated at Milwaukee, Wisconsin, this 7th day of August, 2018.

BY THE COURT:

  
\_\_\_\_\_  
J.P. Stadtmueller  
U.S. District Judge